

Attorney Docket No. 022290.0124PTUS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Florence Guimberteau, et al.

Application No.: 10/522,234

Confirmation No.: 1618

Filed: January 25, 2005

Art Unit: N/A

For: MICROCAPSULES WITH MODIFIED
RELEASE OF ACTIVE PRINCIPLES WITH
LOW SOLUBILITY FOR ORAL DELIVERY

PETITION UNDER 37 C.F.R. § 1.47

Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

Sir:

Applicants respectfully petition, pursuant to 37 C.F.R. § 1.47, to accept the present application as being filed on behalf of the non-signing inventor.

OATH OR DECLARATION BY ALL AVAILABLE INVENTORS

Applicants submit herewith a copy of the July 22, 2005 Notification of Missing Requirements along with a declaration executed by all available inventors who were willing to sign.

IDENTIFICATION OF NON-SIGNING INVENTORS & LAST KNOWN ADDRESSES

Gérard Soula is a named inventor on the above captioned application. Mr. Soula has refused to join the present application by signing of the declaration. It is our present understanding that Mr.

Soula disputes the ownership of the application. His last known address information is as follows:

06/14/2006 ATRAN1 00000128 502228 10522234

01 FC:1463 200.00 0P

Gérard Soula
33 rue Nungesser,
69330 Meyzieu,
France

PROOF OF UNAVAILABILITY OR REFUSAL

Applicants submit herewith the Declaration of Charles Marlio, in support of this petition. Applicants further submit the following documents showing that Mr. Soula was presented with the declaration and assignment:

August 30, 2005 and September 8, 2005 letters whereby Ms. Laribi of Flamel Technologies forwarded a copy of the declarations and assignments to Mr. Soula with a request for his signature.

A copy of the return postcards addressed and received by Mr. Soula forwarding a copy of the declarations and assignments to Mr. Soula.

A copy of the combined declaration and power of attorney and assignment forwarded to Mr. Soula.

It is respectfully submitted that the aforementioned documents along with the Declaration and Exhibits attached thereto establishes: (i) Gérard Soula was presented with the application and declaration; (ii) was requested to join in the application by executing the declaration; and (iii) the conduct of Gérard Soula constitutes a refusal to join in the application.

RELIEF REQUESTED & CONCLUSION

In light of the above, Applicants request that the present application be accepted as complete. To the extent that it is determined that relief is inappropriate pursuant to 37 C.F.R.

§ 1.47(a), Applicants hereby request that this petition be considered under 37 C.F.R.


§ 1.181 and/or § 1.183. The petition fee pursuant to 37 C.F.R. § 1.17(h) is submitted herewith.

Should this petition be considered insufficient, or the relief requested not be granted for any reason, Applicants respectfully request that this be considered a *bona fide* attempt to respond to the Notification of Missing Requirements of July 22, 2005, and that Applicants be permitted an opportunity to supplement this response.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-2228. Should no proper payment be enclosed herewith, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-2228. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-2228.

Respectfully submitted,

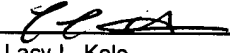
Date June 9, 2006
PATTON BOGGS LLP
Customer Number: 32042
Telephone: (703) 744-8085
Facsimile: (703) 744-8001

By 
Lacy L. Kolo
Attorney for Applicant
Registration No. 55,340

Effective on 12/08/2004. Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818). <h2 style="margin: 0;">FEE TRANSMITTAL</h2> <h3 style="margin: 0;">For FY 2005</h3>		Complete if Known	
<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27		Application Number	10/522234
		Filing Date	January 25, 2005
		First Named Inventor	Florence Guimberteau
		Examiner Name	Not Yet Assigned
		Art Unit	N/A
TOTAL AMOUNT OF PAYMENT (\$) 200.00		Attorney Docket No.	022290.0124PTUS

METHOD OF PAYMENT (check all that apply)	
<input type="checkbox"/> Check <input checked="" type="checkbox"/> Credit Card <input type="checkbox"/> Money Order <input type="checkbox"/> None <input type="checkbox"/> Other (please identify): _____	
<input type="checkbox"/> Deposit Account Deposit Account Number: 50-2228 Deposit Account Name: Patton Boggs LLP	
For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)	
<input type="checkbox"/> Charge fee(s) indicated below <input type="checkbox"/> Charge fee(s) indicated below, except for the filing fee	
<input checked="" type="checkbox"/> Charge any additional fee(s) or underpayment of fee(s) under 37 CFR 1.16 and 1.17 <input checked="" type="checkbox"/> Credit any overpayments	

FEE CALCULATION								
1. BASIC FILING, SEARCH, AND EXAMINATION FEES								
Application Type	Fee (\$)	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
		Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	
Utility	300	150	500	250	200	100		
Design	200	100	100	50	130	65		
Plant	200	100	300	150	160	80		
Reissue	300	150	500	250	600	300		
Provisional	200	100	0	0	0	0		
2. EXCESS CLAIM FEES								
							Small Entity	
Fee Description							Fee (\$)	Fee (\$)
Each claim over 20 (including Reissues)							50	25
Each independent claim over 3 (including Reissues)							200	100
Multiple dependent claims							360	180
Total Claims		Extra Claims		Fee (\$)		Fee Paid (\$)		
15 - 20 =		0		x		=		
Indep. Claims		Extra Claims		Fee (\$)		Fee Paid (\$)		
2 - 3 =		0		x		=		
3. APPLICATION SIZE FEE								
If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).								
Total Sheets		Extra Sheets		Number of each additional 50 or fraction thereof		Fee (\$)		Fee Paid (\$)
- 100 =		/50		(round up to a whole number) x		=		
4. OTHER FEE(S)								
Other (e.g., late filing surcharge): _____ Petition Fee								\$200.00

SUBMITTED BY			
Signature		Registration No. (Attorney/Agent)	55,340
Name (Print/Type)	Lacy L. Kolo	Telephone	(703) 744-8085
		Date	June 9, 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Florence Guimberteau, et al.

Application No.: 10/522234

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LOW SOLUBILITY FOR ORAL DELIVERY

Examiner: Not Yet Assigned

DECLARATION OF FACTS UNDER 37 CFR 1.47

1. My name is Charles Marlio.
2. I have been with Flamel Technologies since February 2004.
3. I served as the Associate General Counsel at Flamel Technologies from February 2004 to July 2006. I currently serve as Director of Strategic Planning.
4. My position requires that I work closely with the Flamel Chief Executive Officer and the Intellectual Property Attorneys.
5. When Gérard Soula was Chief Executive Officer of Flamel Technologies, he did not permit patent applications to be filed in the U.S. Patent and Trademark Office unless he personally reviewed the application and gave express permission.
6. Dr. Soula would provide the final review of the application to ensure that the application fully disclosed the inventive material.
7. Dr. Soula had full authority to amend the application or to prevent the application from being filed and his final approval was required for any changes prior to filing.

8. When U.S. Application No. 10/522,234 was filed, Dr. Soula was the Chief Executive Officer.

9. As was the customary practice at Flamel Technologies when Dr. Soula was Chief Executive Officer, U.S. Application No. 10/522,234 would not have been filed unless Dr. Soula reviewed the application and gave express permission.

Dated: 6 June 2006



Charles Marlio
Flamel Technologies
33 avenue du Dr. Georges Levy
69693 Venissieux Cedex
France
Phone: +33 (0) 472 783 434
Fax: +33 (0) 472 783 435



FLAMEL TECHNOLOGIES

Parc Club du Moulin à Vent
33, Avenue du Docteur Georges Lévy
69693 VÉNISSIEUX CEDEX (France)
☎ 33 (0) 472 78 34 34
Fax 33 (0) 472 78 34 35

Vénissieux, le 8 septembre 2005

M. Gérard Soula
33 rue Nungesser
69330 MEYZIEU

LETTRE RECOMMANDE AVEC AR

Nos réf. : L05-225 RM /sl

OBJET : Brevets

Monsieur Soula,

Nous vous remercions de bien vouloir dater et signer les documents qui suivent concernant les demandes de brevet :

- « MESUSAGE V » : pouvoir, Cas 110 - PCT
- « MICROPUMP RIBAVIRINE » : pouvoir, Cas 109. WO
- « PAA-G-LYSINE HYDROPHOBISE » : cession et déclaration, Cas 46 - US.
- « MEDUSA PLA/GLU » : cession, Cas 42 - Canada

et de nous les retourner au plus vite (enveloppe pré timbrée ci-jointe).

De plus, nous vous saurions gré de bien vouloir nous retourner, très rapidement, les demandes de brevets suivantes approuvées par vos soins :

- « MEDUSA PLA/GLU » : cession envoyée le 25/08/05, Cas 42 - US
- « MEDUSA PAA-G-AA » : cession et déclaration envoyées le 30/08/05, 79 US
- « LIMITATION ANTIBIORESISTANCE » : cession et pouvoir envoyés le 30/08/05, 91 TH / 91 WO
- « EXTENSION C19 PEU SOLUBLES » : cession et déclaration envoyées le 30/08/05. 75 - US

Dans cette attente,

Nous vous prions d'agréer, Monsieur Soula, nos sincères salutations.

Sonia Laribi

P.J. : 5

LA POSTE

RA 3690 3368 1FR

PREUVE DE DÉPÔT
D'UN OBJET RECOMMANDÉ
AVEC AVIS DE RÉCEPTION

TAUX DE RECOMMANDATION R1 ☐ R2 ☐ R3 ☐

CONSERVEZ CE FEUILLET, IL SERA
NÉCESSAIRE EN CAS DE RÉCLAMATION.

LE CAS ÉCHÉANT, VOUS POUVEZ FAIRE
UNE RÉCLAMATION DANS N'IMPORTE QUEL
BUREAU DE POSTE.

DESTINATAIRE

LETTRE ☒

COLIS ☐

G. Soula
33 rue Nungesser
69330 MEYZIEU

Flamel Technologies (SL)
Parc de l'Alouette à Vent
33 av. de Dr G. 2014
69600 VILLEURBANNE

Date	Prix	Contre-Remboursement	Nature de l'objet
08/09/05			



RCS PARIS 356 000 000

PREUVE DE DÉPÔT

LA POSTE

RA 3690 3368 1FR

AVIS DE RÉCEPTION
DE VOTRE ENVOI
RECOMMANDÉ

Présenté le :

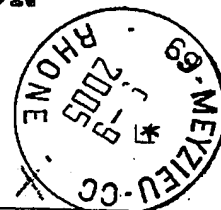
Distribué le :

Signature du destinataire:



G. Soula
33 rue Nungesser
69330 MEYZIEU

RETOUR À :



RCS PARIS 356 000 000

AVIS DE RÉCEPTION

AR

BEST AVAILABLE COPY

DECLARATION AND POWER OF ATTORNEY

As a below named inventor, I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; I believe I am the original, first, and sole inventor (if only one name is listed below) or an original, first, and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

MICROCAPSULES WITH MODIFIED RELEASE OF ACTIVE PRINCIPLES WITH LOW SOLUBILITY FOR ORAL DELIVERY

the specification of which

☐ is attached and/or

☒ was filed on January 25, 2005 as United States Application Serial No. _____ and

☒ was filed on July 28, 2003 as PCT International Application No. PCT/FR2003/002384 and was amended on _____

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above. I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR § 1.56.

I hereby claim foreign priority benefits under 35 U.S.C. § 119(a)-(d) or § 365(b) of any foreign application(s) for patent or inventor's certificate or § 365(a) of any PCT international application(s) designating at least one country other than the United States, listed below and have also identified below, any foreign application(s) for patent or inventor's certificate, or any PCT International application(s) having a filing date before that of the application(s) of which priority is claimed:

Country	Application Number	Date of Filing	Priority Claimed Under 35 U.S.C. 119	
FRANCE	02/09,530	July 26, 2002	<input checked="" type="checkbox"/> YES	<input type="checkbox"/> NO
			<input type="checkbox"/> YES	<input type="checkbox"/> NO

I hereby claim the benefit under 35 U.S.C. § 119(e) of any United States provisional application(s) listed below:

Application Number	Date of Filing

I hereby claim the benefit under 35 U.S.C. § 120 of any United States application(s) or § 365(c) of any PCT International application(s) designating the United States, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application(s) in the manner provided by the first paragraph of 35 U.S.C. § 112, I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR § 1.56 which became available between the filing date of the prior application(s) and the national or PCT International filing date of this application:

Application Number	Date of Filing	Status (Patented, Pending, Abandoned)

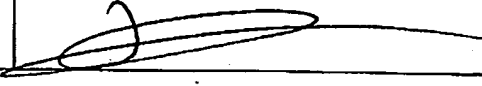
I hereby appoint the following attorney and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

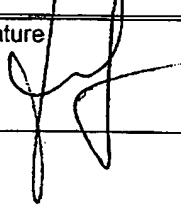
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, L.L.P., CUSTOMER NUMBER 22,852.

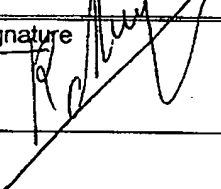
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, L.L.P.

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Full Name of First Inventor Florence GUIMBERTEAU	Inventor's Signature 	Date
Residence Montussan, France	Citizenship France	
Post Office Address 3 route de la Garenne, 33450 Montussan, France		

Full Name of Second Inventor Catherine CASTAN	Inventor's Signature 	Date
Residence Orlienas, France	Citizenship France	
Post Office Address Le Verger Du Gontey, 55 chemin du May, 69530 Orlienas, France		

Full Name of Third Inventor Rémi MEYRUEIX	Inventor's Signature 	Date X
Residence Lyon, France	Citizenship France	
Post Office Address 42 rue Hector Berlioz, Le Bois Saint-Rambert, 69009 Lyon, France		

Full Name of Fourth Inventor Gérard SOULA	Inventor's Signature X	Date X
Residence Meyzieu, France	Citizenship France	
Post Office Address 33 rue Nungesser, 69330 Meyzieu France		

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ASSIGNMENT

WHEREAS, We, the below named inventors, (hereinafter referred to as assignors, have made an invention entitled:

MICROCAPSULES WITH MODIFIED RELEASE OF ACTIVE PRINCIPLES WITH LOW SOLUBILITY FOR ORAL DELIVERY

for which we executed an application for United States Letters Patent concurrently herewith on _____ or filed an application for United States Letters Patent on January 25, 2005 (Application No. _____); and

WHEREAS, **FLAMEL TECHNOLOGIES**, a corporation of **France**, whose post office address is *33 avenue du Docteur Georges Lévy, 69200 Venissieux, France*, (hereinafter referred to as assignee), is desirous of securing the entire right, title, and interest in and to this invention, the application for United States Letters Patent on this invention and the Letters Patent to be issued upon this application;

NOW THEREFORE, be it known that, for good and valuable consideration the receipt of which from assignee is hereby acknowledged, we, as assignors, have sold, assigned, transferred, and set over, and do hereby sell, assign, transfer, and set over unto the assignee, its lawful successors and assigns, our entire right, title, and interest in and to this invention and this application, and all divisions, and continuations thereof, and all Letters Patent of the United States which may be granted thereon, and all reissues thereof; and we hereby authorize and request the Commissioner of Patents and Trademarks of the United States to issue all Letters Patent for this invention to assignee, its successors and assigns, in accordance with the terms of this Assignment;

AND, WE HEREBY further covenant and agree that we will, without further consideration, communicate with assignee, its successors and assigns, any facts known to us respecting this invention and testify in any legal proceeding, sign all lawful papers when called upon to do so, execute and deliver all papers that may be necessary or desirable to perfect the title to this invention in said assignee, its successors and assigns, execute all divisional, continuation, and reissue applications, make all rightful oaths and generally do everything possible to aid assignee, its successors and assigns, to obtain and enforce proper patent protection for this invention in the United States, it being understood that any expense incident to the execution of such papers shall be borne by the assignee, its successors and assigns.

AND, WE HEREBY authorize and request the attorneys we have empowered in the Declaration and Power of Attorney in this application, to insert here in parentheses (Application No. _____, filed January 25, 2005) the filing date and application number of said application when known.

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IN TESTIMONY WHEREOF, we have hereunto set our hands.

First Assignor

Florence GUIMBERTEAU
3 route de la Garenne
33450 Montussan,
France

Citizenship: France

Signature: 

Date: 24 august 2005

Second Assignor

Catherine CASTAN
Le Verger du Gontey,
55 chemin du May
69530 Orlenas,
France

Citizenship: France

Signature: 

Date: August 29, 2005

Third Assignor

Rémi MEYRUEIX
42 rue Hector Berlioz,
Le Bois Saint-Rambert,
69009 Lyon,
France

Citizenship: France

Signature: 

Date: X

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Fourth Assignor

Gérard SOULA
33 rue Nungesser,
69330 Meyzieu,
France

Citizenship: France

Signature:

X

Date:

X

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